REMARKS

This is in response to the Final Office Action of March 22, 2007. Reconsideration and allowance of the subject application, as amended, are respectfully requested.

Amendments to the Claims

Independent claims 1 and 2 have been amended to recite that the formation of an emulsion or dispersion in water of a polymer that is dispersed in an oil phase. Support can be found, for example, at paragraph [0016] of the application which recites that the emulsion or dispersion containing polyacrylamide is one that is an emulsion in water and dispersed in an oil phase. It goes on to disclose that "preferably…an emulsion of polyacrylamide in water emulsified in a hydrocarbon." Accordingly, no new matter has been entered.

Independent claims 1 and 2 have also been amended to recite that such emulsion or dispersion is then mixed with acrylic or acrylamide particles at a particle size of about 0.5 mm to 2.0 mm to form a slurry. Support can be found in dependent claims 12 and 16 which have been cancelled. Accordingly, no new matter has been entered.

Independent claims 1 and 2 have also been amended to recite that the slurry is combined with water at 5-40 parts water to one part slurry by volume or weight. Support can be found in dependent claims 10 and 14 which have been cancelled. Accordingly, no new matter has been added.

Accordingly, claims 1 and 2 have been amended and claims 10, 12, 14 and 16 have been cancelled.

Rejections under 35 U.S.C. § 103

Claims 1-16 have been rejected under 35 USC §102 as anticipated by Harlukowicz, et al. (U.S. Patent Number 6,642,351, hereinafter "Harlukowicz") in combination with Yagi, et al. (U.S. Patent Number 5,258,424, hereinafter "Yagi").

As an initial matter, Applicants appreciate the Examiner's detailed comments in the present Office Action. Applicants also appreciate the Examiner's remarks noting that the principal reference of Harlukowicz does not disclose a coating composition or applying the aqueous solution to a target surface.

As can be seen herein, Applicants have amended independent claims 1 and 2 to recite that one first forms an emulsion or dispersion in water of a polymer (e.g. polyacrylamides, polyacrylates, polyacrylic acids and copolymer thereon) that is dispersed in an oil phase. Applicants note that in the Office Action of March 22, 2007, a critical review of Harlukowicz et al was provided at pages 3-4. It was noted that "Harlukowicz teaches that methods of the invention include contacting the airborne stream of separated polyacrylamide particles with a moving stream of water wherein "water" is a broad term that includes various types of water and aqueous solutions including water which already contains the dispersed polymer."

Therefore, as an initial matter, it is hopefully clear to the Examiner that as amended herein, Applicants are reciting a feature that is not disclosed or suggested by Harlukowicz. Specifically, as noted, Harlukowicz starts with and relies upon the presence of separated polyacrylamide particles that are contacted with an airborne stream of water. And while the water may be "water that already contains dispersed polymer", this is not understood to teach or suggest the use of an emulsion or dispersion in water of a polymer dispersed in an oil phase. See again, amended claims 1 and 2.

It is also worth noting that in the background of Harlukowicz, it is mentioned that polyacrylamides are supplied in a concentrated form which may include a "water in oil emulsion, water in oil microemulsions, aqueous dispersions, dispersions of the polymer in oil, etc. Col. 1 lines 26-37. However, Harlukowicz does not teach or suggest the use of such water in oil emulsion and advances the rational for his subject invention indicating that "to our knowledge, no manufacturer is currently supplying the flocculation market with commercially significant quantities of dry polyacrylamides having a number average particle size of below about 300 microns as a part of its regular "on-spec" production." Col. 2, lines 55-59. Harlukowicz then defines his use of the term "dry polyacrylamides" as a "polymer composition of about 30% water or less". Col. 3, lines 53-55. Accordingly, Harlukowicz goes on to instruct on the use of his "300 micron or less" polyacrylamide particles to "flocculate suspended solids." Col. 8, lines 55-63.

With that in mind, it is believed appropriate to now point out another feature of amended claims 1 and 2, which is mixing the emulsion or dispersion of the polymer dispersed in an oil phase with acrylic or acrylamide polymer particles at a particle size of about 0.5 mm to 2.0 mm to form a slurry. Applicants note that such feature was recite in dependent claims 12 and 16. Applicants also note that in the Office Action of March 22, 2007, it was written that "Harlukowicz teaches that the polyacrylamide particles have a particle size of about 300 microns or less, preferable 150 microns or less." As 300 microns is 0.3 mm, it is believed that the claims as amended herein recite yet another feature that is not disclosed or suggested by Harlukowicz.

Finally, Applicants note that claims 1-2 have been amended to recite that slurry is then combined with water at 5-40 parts water to one part slurry by volume or weight. Applicants there note the point advanced at page 5 of the Office Action of March 22, 2007 that Harlukowicz disclosed "aqueous compositions of most preferably 0.2% or greater, by weight, based on the total weight of aqueous compositions and, in some cases, the aqueous compositions may contain more than 5% of the dispersed polymer by weight." However, it is hopefully clear in view of the above that while Harlukowicz was specifying the amount of water to be combined with his polyacrylamide particles, it does not teach or suggest the following features of both independent claims 1 and 2:

- forming an emulsion or dispersion in water of a polymer and dispersed in an oil phase selected from the group consisting of polyacrylamides, polyacrylates, polyacrylic acids, and copolymers thereof;
- mixing the emulsion or dispersion with an acrylic or acrylamide polymer particles at a particle size of about 0.5 mm to 2.0 mm to form a slurry; ~~and~~
- combining the slurry with water at 5-40 parts water to one part slurry by volume or weight

Turning to the secondary reference of Yagi et al (5,258,424) it is not believed that Yagi makes up for the deficiencies of Harlukowicz in view of the amendments herein and remarks above. Yagi et al is directed at a film coating composition to control moisture permeability and resistance. Yagi et al was cited in the Office Action of March 22, 2007 for the proposition that although Harlukowicz did not teach or suggest applying his compositions to a target surface, such could be found in Yagi et al. Yagi et al teaches that "[t]he present acrylic resin emulsion *must* be of film forming nature, i.e. *must* form a film when applied and dried or baked at an elevated temperature." Col. 2, lines 55-57 (emphasis added). This is not understood to provide a viscous gel coating. See again, amended independent claims 1 and 2. Accordingly, as noted above, even should one combine the subject references (which is not deemed appropriate as one reference is directed at flocculation of suspended solids and the other reference directed at baked coatings) one would not arrive at the features now advanced in the amended claims. It is therefore respectfully submitted that claims herein satisfy the requirements of patentability under 35 USC § 103.

Double Patenting

Applicants also note the provisional nonstatutory obviousness-type double patenting rejection of claim 1-16 in view of claims 12-17 of U.S. Appl. No. 10/727,615 has been maintained in view of the new rejection under 35 U.S.C. § 103. Applicants again wish to point out that under MPEP § 822.01, if the provisional double patenting rejection in one application is the only rejection remaining in that application the double patenting rejection may be properly withdrawn and the application may be permitted to issue as a patent. Applicants request therefore that the Examiner consider the remarks herein regarding the outstanding rejections under 35 USC § 103. Accordingly, if the Examiner finds as presented herein that the claims satisfy the requirements of 35 USC § 103, it would appear that pursuant to MPEP § 822.01, the present amendment has rendered double patenting rejection as moot. In addition, Applicants note that Examiner McAvoy is also responsible for U.S. 10/727,615. In the event that the Examiner comes to the decision that allowable subject matter is present in both cases, Applicants are prepared to file the necessary terminal disclaimers to obviate this rejection.

Having dealt with all the objections raised by the Examiner, it is respectfully submitted that the claims of the present application, as amended, are in condition for allowance. Thus, early allowance is earnestly solicited.

If the Examiner desires personal contact for further disposition of this case, the Examiner is invited to call the undersigned Attorney at 603.668.6560.

In the event there are any fees due, please charge them to our Deposit Account No. 50-2121.

Respectfully submitted,

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